Supreme Court, U.S.
FILED
MAR - 4 1996
OFFICE OF THE CLERK

No. 95 1462

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ST. LOUIS COUNTY, MISSOURI,

Petitioner,

VS.

ROBERT KORNBLUM,

Respondent.

Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN A. ROSS
St. Louis County Counselor

ANDREW J. MINARDI
Senior Associate County Counselor
(Attorney of Record)
County Government Center
41 South Central Avenue
Clayton, Missouri 63105
(314) 889-2042

Attorneys for Petitioner

St. Louis Law Printing, Inc. 14239 Manchester Rd. Manchester, MO 63011 314-231-4477

QUESTIONS PRESENTED

1. In a public nuisance demolition proceeding is there a constitutional due process notification requirement that the County give notice of the demolition hearing to a person who has no interest in the property at the time of the nuisance proceeding?

2. Has the circuit court's ruling improperly expanded the Fourteenth Amendment's guarantee that no governmental entity will deprive any person of property without due process of law into a guarantee that all unknown, unidentifiable, future purchasers have a constitutional right to receive notice of all county nuisance abatement proceedings?

3. Was the County's failure to record the nuisance declaration in accord with its ordinance unreasonable within the meaning of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and thus a violation of due process?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities	iv
Opinions Below	1
Jurisdiction	2
Ordinance Provision Involved	2
Statement of the Case	3
Reasons for Granting the Writ	6
Argument	6
Conclusion	11
Appendix A, Opinion of the Court of Appeals	A1-A17
Appendix B, Memorandum of the District Court	A18-A23

TABLE OF AUTHORITIES

Page(s)

Cases:

Gregory v. City of Rogers, Ark., 974 F.2d 1006 (8th Cir. 1992) 10

Kornblum v. St. Louis County, Missouri, 835 F.Supp. 1127 (E.D.Mo. 1993) 1,4

Kornblum v. St. Louis County, Missouri, 48 F.3d 1031 (8th Cir. 1995) 2,5

Kornblum v. St. Louis County, Missouri, __ F.3d __ (cause 93-4111, December 22, 1995) 5,7,8,9,10

Mennonite Board of Missions v. Adams, 462 U.S. 791 (1983) 9

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 6,7,9,10

Myers v. Morris, 810 F.2d 1437 (8th Cir.) *cert. den.* 484 U.S. 828 (1987) 10

Reese v. Kennedy, 865 F.2d 186 (8th Cir. 1989) 10

Statutes:

28 U.S.C. §1254(1) 2

28 U.S.C. §1331 4

28 U.S.C. §1343(a)(3) 4

42 U.S.C. §1983 4,9

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

ST. LOUIS COUNTY, MISSOURI,

Petitioner,

VS.

ROBERT KORNBLUM,

Respondent.

Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner St. Louis County, Missouri, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Eighth Circuit entered on December 22, 1995.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit sought to be reviewed is not currently reported. A copy of the Eighth Circuit opinion is in the attached appendix. The opinion of the District Court relevant to the issues presented by this Petition for Certiorari appears at 835 F.Supp. 1127 [*Kornblum v. St. Louis County, Missouri*].

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered December 22, 1995. The judgment was rendered by the en banc court after granting a motion for rehearing concerning an Eighth Circuit panel decision of February 15, 1995.[1] This petition was filed within ninety days of the December 22, 1995, en banc judgment. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

ORDINANCE PROVISION INVOLVED

Section 125.4.3 of St. Louis County Ordinance 11,718, 1984 provides:

> *Notice of Declaration of Nuisance.* -- Upon the declaration of public nuisance by the Building Official, a "Notice of Declaration of Nuisance" shall be filed and recorded in the office of the St. Louis County Recorder of Deeds. Such notice shall be signed by the Building Official, or his designated representative, and shall be notarized. A copy of such recorded instrument shall be filed in the "Unfit Building" case file. Upon the completion of the work necessary to cause the building or structure to comply with all applicable County ordinances, and the approval thereof by the Building Official, or upon the satisfaction and release of any and all liens imposed pursuant to the provisions of this Chapter, the Building Official shall cause a notice of said compliance or satisfaction to be filed in the Office of the St. Louis County Recorder of Deeds. A copy of such recorded instrument shall be filed in the unfit building case file.

---

[1] The panel decision is reported as *Kornblum v. St. Louis County, Missouri*, 48 F.3d 1031 (8th Cir. 1995).

STATEMENT OF THE CASE

In the spring of 1987, St. Louis County initiated proceedings to declare the single family residence at 9766 Nolte Avenue a public nuisance. In March of 1987 a county building inspector visited the premises and found the residence to be in a general state of disrepair. The inspector posted notices of the declaration of nuisance on the premises. The posting was repeated in June of 1987 when the inspector learned that the notices had been torn down.

The County obtained a title report which listed Orville and Daisy Glendinning as owners of the property at 9766 Nolte. In fact, Orville and Daisy Glendinning were both deceased and the heirs of Daisy Glendinning had become the owners of the fee simple title to the property pursuant to a decree by the St. Louis County Circuit Court, Probate Division, issued January 8, 1987. The title report did not reflect transfer of title to the heirs.

A certified letter indicating the declaration of the property as a nuisance was sent to "Daisy Glendinning c/o Pat Andrew" on July 10, 1987. The notice was sent to Mr. Andrew because his name appeared on the County Collector's rolls as the recipient of the real estate tax bills for the property at 9766 Nolte. (Real estate tax bills sent to Andrew had been paid.) Mr. Andrew received the certified letter. Andrew notified the County that he was taking steps to board up the building.

On July 20, 1987 a declaration of nuisance relating to the structure at 9766 Nolte was published in a local newspaper, the *Watchman's Advocate*. On August 28, 1987 a notice of public hearing for October 1, 1987 concerning the demolition of the structure was published in the same newspaper. The county also sent notice of the demolition hearing by way of certified mail to "Orville Glendinning c/o Pat Andrew." On October 1, 1987 the County convened a hearing to determine the state of the structure at 9766 Nolte. No representative of the property owners ap-

peared. Following the testimony of a building inspector as to the dilapidated state of the structure and the efforts made to notify the property owners, the hearing officer concluded that the property was a public nuisance and issued an order of demolition. The order provided for the removal of the structure by the owners within thirty days or the county would remove the structure thereafter.

On January 8, 1987 the probate court issued a decree determining ten heirs of decedent. The decree was not filed in the Recorder of Deeds office until February 3, 1988.

On February 4, 1988 Kornblum purchased the property by general warranty deeds from the heirs of Orville and Daisy Glendinning. At the time of the purchase, he was unaware of the declaration of nuisance and the outstanding demolition order. Although section 125.4.3 of St. Louis County Ordinance No. 11,718 (1984) requires the recording of the declaration of nuisance with the County Recorder of Deeds, the declaration of nuisance relative to the 9766 Nolte property was not recorded and did not appear on the title report Kornblum obtained at the time he purchased the property.

In April of 1988 the County demolished the structure pursuant to the October 1, 1987 demolition order. Kornblum learned of the declaration of nuisance and demolition order only after the demolition had occurred.

The district court granted County's motion for summary judgment.[2] The district court had jurisdiction pursuant to 42 U.S.C. §1983, 28 U.S.C. §1331 and 28 U.S.C. §1343(a)(3).

---

[2] *Kornblum v. St. Louis County, Missouri*, 835 F.Supp. 1127 (E.D.Mo. 1993).

On appeal, the circuit court, in a panel opinion, affirmed the district court[3], Judge Arnold dissenting. After granting rehearing, the circuit court in an en banc opinion written by Judge Arnold reversed the district court judgment and remanded for further proceedings. Of the twelve judges participating in the en banc decision, four joined in the dissent of Judge Hansen.[4]

---

[3] *Kornblum v. St. Louis County, Missouri*, 48 F.3d 1031 (8th Cir. 1995).

[4] *Kornblum v. St. Louis County, Miss ri*, __ F.3d __ (cause 93-4111, December 22, 1995). This opinion is reprinted in the Appendix.

REASONS FOR GRANTING THE WRIT

This case presents important questions concerning how far local governments must now go in providing due process notice to unidentifiable and unknown, future potential purchasers of real estate who have absolutely no interest in the property at the time notice of an action concerning the real estate is provided to record owners. The circuit court's opinion greatly expands the notice required by *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and its progeny by now requiring that notice reach unidentified and unknown future potential purchasers of real property subject to action by the government. Allowing the circuit court opinion to stand as precedent will substantially and unreasonably impede local governments from taking appropriate and proper steps to remediate conditions which adversely impact on the safety, health, and welfare of the community.

ARGUMENT

The circuit court's opinion greatly expands the due process notice required by *Mullane* and its progeny by now requiring that notice reach unidentified and unknown future potential purchasers of real property which is subject to action by the government.

Judge Hansen in dissent, joined by four other judges, aptly states the crux of the matter as follows:

> In this case, however, our court creates a constitutional right to notice for an entire class of unknown, future potential purchasers who themselves do not yet even know that they may be interested in buying the property and who certainly have no legal interest in the property and thus no reason to contest state action at a hearing. This result turns our jurisprudence of procedural due process on its head. Moreover, it essentially expands the Fourteenth Amendment's guarantee that no governmental entity will 'deprive any person of . . . property, without due process of

> law' into a guarantee that all unknown, future purchasers have a constitutional right to receive record notice of all county nuisance abatement proceedings affecting everybody else's property. We respectfully disagree with this interpretation of the due process guarantee.

Kornblum v. St. Louis County, cause 93-4111, slip opn. at A12, December 22, 1995. (A copy of this opinion is in the Appendix.)

Although the circuit court ruled otherwise, St. Louis County provided notice that complied with Fourteenth Amendment due process requirements. The undisputed facts show two postings of the building, two publications, a title report and two certified mailings to the person paying the taxes as shown on County tax records.

In March of 1987 a county building inspector visited the premises and found the residence at 9766 Nolte to be in a general state of disrepair and posted notices of the declaration of nuisance on the premises. The posting was repeated in June of 1987. The County obtained a title report which listed Orville and Daisy Glendinning as owners of the property at 9766 Nolte. A certified letter advising that the property was declared a nuisance was sent to "Daisy Glendinning c/o Pat Andrew" on July 10, 1987. The notice was sent to Andrew because his name appeared on the County Collector's rolls as the recipient of the real estate tax bills for the property. (Real estate tax bills sent to Andrew had been paid.) After he received the certified letter, Andrew notified the County that he was taking steps to board up the building. Andrew was a caretaker as this Court recognized in *Mullane*, 339 U.S. at 316. On July 20, 1987 a declaration of nuisance identifying the property was published in a local newspaper. On August 28, 1987 a notice of public hearing for October 1, 1987 concerning the demolition of the structure was published in the same newspaper. The county also sent notice of the demolition hearing by way of certified mail to "Orville Glendinning c/o Pat Andrew." At this time in the process, County had every expec-

tation that all parties with an interest in the property had notice of County's intentions.

Unbeknownst to the County, Orville and Daisy Glendinning were both deceased and the heirs of Daisy Glendinning had become the owners of the fee simple title to the property pursuant to a probate court decree issued January 8, 1987. The title report secured by the County did not reflect transfer of title to the heirs.

Kornblum, who purchased the Nolte property by general warranty deeds, had no interest in the property at the time the declaration of nuisance was published on July 20, 1987. Kornblum did not purchase the property until February 4, 1988 — a time when he first acquired an interest in the property. Prior to February 4, 1988, Kornblum was just one person in a million in St. Louis County, Missouri.

In the eyes of the circuit court majority, the case turns on the fact that County failed to record the July 10, 1987 declaration of nuisance as provided in its ordinance. On July 10, 1987, Kornblum was an unknown and unidentifiable person who had *no* interest in the property. Kornblum, however, asserts that County's failure to record the nuisance declaration somehow denied him his property without due process of law. Although the circuit court did not hold that compliance with County's ordinance was a constitutional requirement, in a purported limited ruling the circuit court stated:

> We hold only that the means resorted to here to give notice to prospective purchasers did not, in the circumstances of this case, satisfy the requirements of due process.

Kornblum v. St. Louis County, slip opn. at A5.

One has to wonder if St. Louis County had no recording requirement, would the notice provided in this case have met constitutional prerequisites?

The circuit court's ruling, however, is not a limited one, but, in fact, is far reaching and troubling for local governments. The result is that local governments are faced with a plethora of unknown and unascertainable "Kornblums" who will now be armed with a circuit court decision authorizing the filing of civil rights suits under 42 U.S.C. §1983 with all the liability such suits portend.

Until the circuit court's decision, the law on notice had been set by this Court in *Mullane*, *supra*, and *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983). The dissent in *Kornblum* correctly noted:

> If the interested parties are unascertainable in the 'due course of business,' all the Constitution requires is that the County provide notice by publication in a local paper. *Mullane*, 339 U.S. at 316-17. Thus, *Mullane* and *Mennonite* make clear that notifying ascertainable parties by mail and unascertainable parties by publication is all the notice that due process requires.

Kornblum v. St. Louis County, supra at A9.

The circuit court's ruling is so out of touch with *Mullane* and *Mennonite* that it should be rejected out of hand by this Court. In *Mennonite* Justice O'Conner dissented from the majority which she viewed as going much farther on notice requirements than *Mullane* and it progeny required. The circuit court's ruling in the instant case goes far beyond the pale of *Mennonite*, and if not rejected per curium by the Court, should be brought before the Court for review by petitioner's request for a writ of certiorari.

In reaching its decision the circuit court concluded that a six month delay between the demolition hearing and the actual demolition "contributed significantly to the unreasonableness of the notice in this case." *Kornblum* supra at A6-A7. How does hindsight make the actual notice unreasonable? The notice was

either reasonable or it was not. The circuit court's action appears to create a duty on County to conduct another record search and notify subsequent record owners before removing the nuisance structure. But *Mullane* suggest this is not necessary. *Mullane*, 339 U.S. at 318; see *Kornblum* at A14. Such a requirement would be unreasonably burdensome on a local government and would attach one day after the declaration of nuisance as well as one day and six months after the declaration of nuisance.

While the failure to record in accord with County's ordinance may make a County official liable for negligence, the failure to record does not rise to a constitutional tort. See *Reese v. Kennedy*, 865 F.2d 186, 187 (8th Cir. 1989); *Myers v. Morris*, 810 F.2d 1437, 1469 (8th Cir.) *cert. den.* 484 U.S. 828 (1987); *Gregory v. City of Rogers, Ark.*, 974 F.2d 1006, 1009 (8th Cir. 1992).

Petitioner incorporates the dissenting opinion and rationale of Judge Hansen as an additional reason why the writ for certiorari should issue.

Again, the dissent succinctly points out the fragilities of the majority opinion when it observes:

> In order to sustain the court's position, its opinion must be read to create one or more new constitutional duties: (1) a duty to give record notice for the benefit of parties who have no legally protected property interests; or (2) a continuing duty on the part of the County to keep itself informed of all changes in ownership and to give a separate, second notice to any new owners just before the wrecking crew goes to work. We believe that each one of these new duties would be an unwarranted extension of a state's obligation under the Due Process Clause.

Kornblum v. St. Louis County, supra at A16.

Petitioner cannot improve on the dissent's analysis.

CONCLUSION

For the foregoing reasons, this Court should reverse the circuit court per curiam directing that the district court's judgment be reinstated or issue the Writ of Certiorari to review the judgment and opinion of the Eighth Circuit Court of Appeals.

Respectfully submitted,

JOHN A. ROSS
ST. LOUIS COUNTY COUNSELOR

ANDREW J. MINARDI
SENIOR ASSOCIATE
COUNTY COUNSELOR
(Attorney of Record)
County Government Center
41 South Central Ave.
Clayton, Missouri 63105
(314) 889-2042

Attorneys for Petitioner